



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Lowell Saltonstall Building,

100 Cambridge Street, Boston 02204

June 21, 1983

You inquire whether the federal retail tax on truck tractors and heavy trucks and trailers imposed under Section 4051 of the Internal Revenue Code ("Code") is included in the sales price on which the Massachusetts sales and use taxes are based. The federal tax is generally imposed at 12 per cent of the retail sales price of truck tractors and chassis and bodies of heavy trucks and trailers. It was added to the Code by Section 512(b)(1) of the Surface Transportation Assistance Act of 1982, Public Law 97-424.

The retail tax took effect on April 1, 1983, on the expiration of the manufacturers' excise levied under Section 4061(a) of the Code. For those vehicles on which the 10 per cent manufacturers' tax has already been imposed, but which are retailed on or after April 1, the federal retail tax is two per cent (I.R.C. § 4051(d)).

Separately-stated state retail sales taxes are excluded from the measure of the federal retail tax (I.R.C. § 4052(b)(1)(B)(ii)).

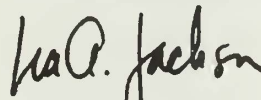
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The sales price of tangible personal property on which the Massachusetts sales and use taxes are based is the total amount charged by the vendor as consideration for a retail sale, with no deduction on account of "the cost of materials used, labor or service cost, interest charges, losses or other expenses" (G.L. c. 64H, § 1(14)). General Laws Chapter 64H, Section 1(14)(c) provides that, in determining the sales price, "the amount of the manufacturers' excise tax levied upon motor vehicles under section 4061(a) of the Internal Revenue Code of 1954 of the United States, as amended," is excluded.

Federal retail excises generally have not been included in the sales price on which state sales and use taxes are based, even where the state sales and use tax statute contains no provision specifically excluding the amount of the federal tax from the sales price. Ross Jewelers, Inc. v. State, 260 Ala. 682, 72 So. 2d 402, 43 ALR 2d 851 (1953); see Gurley Oil Co. v. Rhoden, 421 US 200 (1975).

Based on the foregoing, it is ruled that the sales price of truck tractors and heavy trucks and trailers does not include the amount of the federal retail tax imposed under Section 4051 of the Code.

Very truly yours,



Commissioner of Revenue

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